

## NEW TRIAL FOR MARIE BARBERI.

Court of Appeals Reverses the Judgment of Conviction for Murder.

Warden Sage's Daughter, Elizabeth, Bears the Joyful News to the Prisoner.

OPINION UNFAVORABLE TO GOFF.

It States That There Was a Wide Departure from Correct Principles in the Conduct of the Trial.

Marie Barberi was granted a new trial yesterday by the Court of Appeals. The condemned woman has been confined in Sing Sing for some time, awaiting execution for the murder of her lover and betrayer, Domenico Cataldo.

Judge O'Brien wrote the opinion and all the Judges present concurred. With her dark eyes upraised to heaven and murmuring a prayer of thanksgiving to the Madonna on the tiny black crucifix that was pressed to her lips, Marie Barberi showed yesterday in her prison quarters at Sing Sing that she understood and appreciated the decision of the Court of Appeals in her favor.

While the myriad newsways were noisily crying out her good fortune to the passing thousands on Park row early in the afternoon, the condemned woman, to whom the news meant another chance for life and, perhaps, for freedom, was wistfully looking through the barred windows of her cage at the execution room across the court yard, all ignorant of the fact that chances were in favor of her never seeing the inside of that dreaded chamber.

**BREAKING THE NEWS.**

It was Warden Sage's original intention to allow his wife, who has taught Marie to read and write—yes, almost to think—the great happiness of informing the poor girl of her probable salvation from the electric chair. But Mrs. Sage had come to this city and would not return until night. So, when Lawyer Emmanuel M. Friend, of the city's counsel, arrived at 4 o'clock, he decided to break the news to her at once. Some argument as to the most pleasant way of doing this resulted in the choice of the Warden's gentle, sweet-faced daughter, Elizabeth, who cheerfully volunteered for the mission. She went into the girl's room, accompanied by the Warden and Mr. Friend. Mr. Friend's presence was of great significance to Marie, for she knew that nothing of minor importance would have brought the busy man away from his practice even for part of a day. But the smile that lit up the face of the lawyer reassured her at once, as she stood, startled and fearing the worst by the side of her day companion, Mrs. Abbie M. Vincent. The Warden beamed upon her through his gold-mounted glasses and Miss Sage ran toward her with outstretched hands and face aglow with excitement.

Marie saw that the news was good. She met Miss Sage half way and nestled, contentedly, trembling, in her arms.

"You are to have another trial, Marie," said Miss Sage as gently as possible.

**SLOW TO UNDERSTAND.**

"To be tried again? Oh, no!" cried the little prisoner, starting back in dread of another such ordeal as she was subjected to before.

With great difficulty Miss Sage, the Warden, Mr. Friend and Matron Vincent explained that this new trial would be a fair one; that she would be defended by her friends, Friend & House, whom her benefactress, the Countess di Brazza, had chosen, and that it would almost surely result in saving her life and probably in setting her free in a short time.

Suddenly it dawned upon her.

Then she went over, quite solemnly, to her little altar between the windows. Mired her tearful eyes, and, fervently pressing the little ebony cross to her lips, muttered: "Oh Mother of God, I thank Thee!"

Then, with all the impulsiveness of her race, she turned to Lawyer Friend and, covering his hand with kisses, said, brokenly:

"Good Mr. Friend, God bless you! You and Mr. House have been so kind to me. I wish I had a million dollars. I would give it all to you. But I am so poor! I have nothing—nothing!"

"Poor in money, Marie," faltered the lawyer, choking back his emotions, "but rich in friends. Every woman in the land is your friend. The newspapers are your friends. You are not so poor after all."

**BLESSED RECORDER GOFF.**

"No, no, no!" cried the girl joyously, grasping the meaning at once. "I am rich, ah! so rich, in good, kind friends! God bless them all!"

"Even Recorder Goff?" some one inquired.

"Even Recorder Goff," she said, the lips, repentant, kissing the crucifix again and struggling with the words. She bears no malice to any one and has never given the slightest indication of temper in the months of her confinement at Sing Sing.

Although she is a transformed being since her incarceration by reason of her scholastic instruction and the refining influence of Mrs. Sage and her daughters, Marie is still an innocent, child-like, almost animal-like, creature. She thought of her joy as soon as her first transport of joy and gratitude was over.

"My mother know?" she asked.

No sooner was she informed than she went to the cage of her pet canary, Chichila, a present from the Countess, and, seriously imparting the wonderful news to him. Then Puggie, the frisky puppy presented to her by little Joe Connaughton, son of the principal keeper, had to be told, and the little brute seemed so glad that Marie really believed that he understood her.

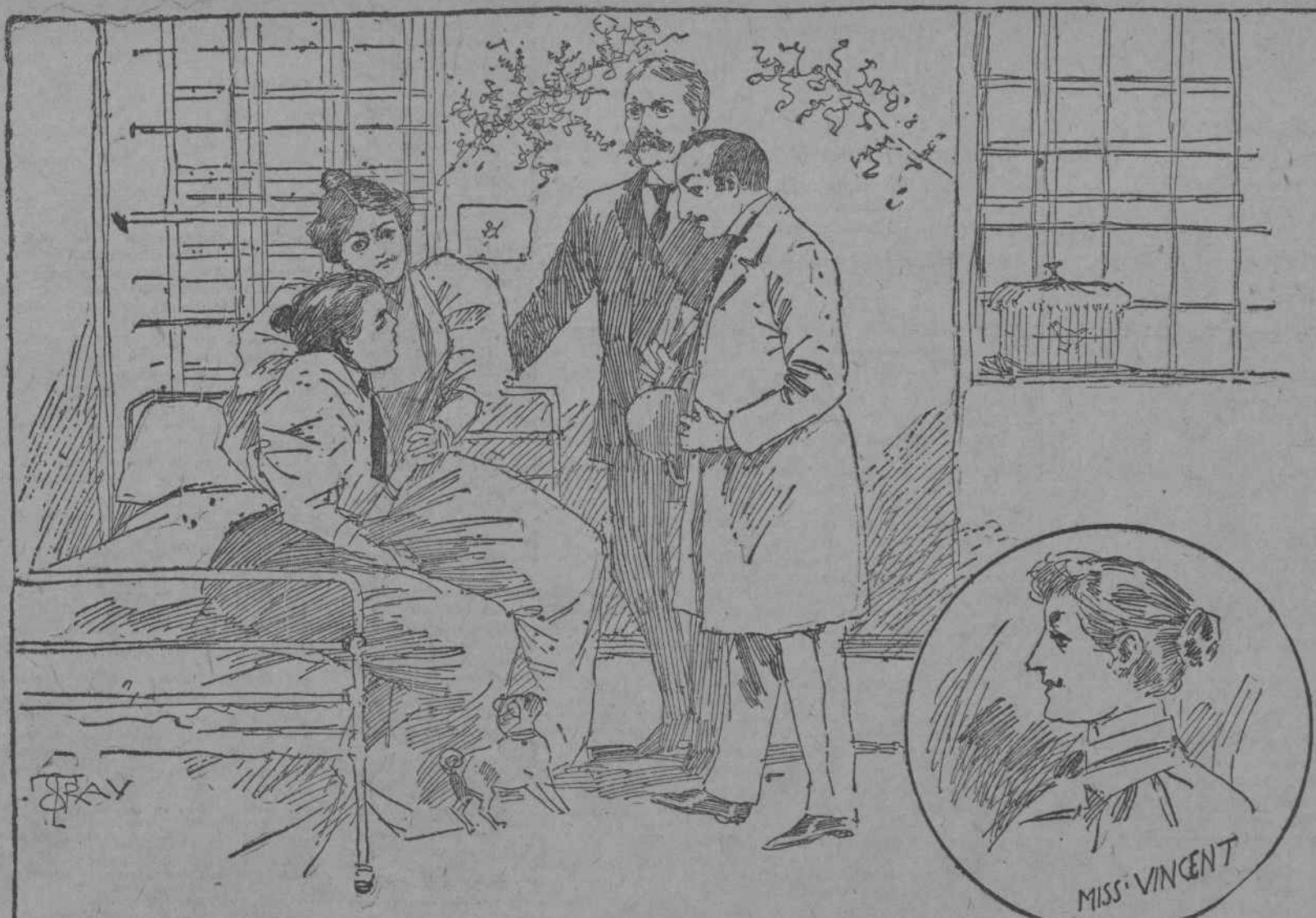
Then she went over to the mantel-shelf where the pictures of Mrs. Sage, Countess di Brazza, little Ada di Brazza and Mrs. Foster, the "Tombas Angel," are placed, and told each of her friends' likenesses about it.

"I will write to the Journal," she said, and getting down by the window she wrote freely and legibly a pretty worded letter of thanks without prompting or guidance.

Marie dreads returning to the Tombas, for there she must occupy a dismal cell, while in Sing Sing she has had a comfortable bedroom, sitting room and bathroom, fitted up by the State especially for her, as she is the only woman prisoner in the prison now and has been for some time past.

**HAS PROFITED BY CONFINEMENT.**

She has taken great interest in her education. When she arrived at Sing Sing



MARIE BARBERI IN HER CELL RECEIVING THE TIDINGS OF HER NEW TRIAL.

half a year ago, she could not read or write a word of English. Now she does both, very well. Recently she has read "Cinderella," "Mother Goose" and other children's books, and Mrs. Vincent has been reading to her Anthony Trollope's book, "Her Life's Trial."

She will probably be removed from Sing Sing to this city during the present week.

Recorder Goff was asked this question in his chambers yesterday:

"What is Your Honor's opinion of the decision of the Court of Appeals in the Barberi case, rendered to-day, in which the Court grants the condemned woman a new trial on the ground of exclusion of proper evidence by the Court and partiality in the charge to the jury, and of a biased and unfair trial?"

"I will not discuss the matter," was his answer.

Assistant District Attorney Lindsay, who argued against the appeal for the people, said: "The decision is, I must say, just."

Mr. Frederick B. House, of Friend & House, who so eloquently argued the appeal for Marie, said:

"I am too happy to talk. It is a great triumph for law, for logic and for justice, over stupidity, partiality and cruel oppression."

Mr. Friend, of counsel for Marie, had this to say:

"The case has been reversed by reason of the Court's general attitude throughout the trial, particularly as evidenced by the biased tone of the charge to the jury."

**MARIE BARBERI'S CRIME.**

The crime of which Marie Barberi was convicted and sentenced in the Court of General Sessions, in this city on July 18, 1895, before Recorder Goff, was that of killing Domenico Cataldo, by cutting his throat with a razor. She was a poor girl, the daughter of a struggling Italian tailor on Livingston street, and could not pay for counsel. Amos H. Evans and Henry D. Sedgwick were assigned to her by the Court. She has changed counsel at her own request since the trial, engaging Mr. Friend, House & Grossman, on the advice of the Countess di Brazza, who interested herself in Marie's case because she was an unfortunate Italian girl.

Cataldo, who kept a bootblack's stand, at the corner of Elm and Canal streets, had asked her to marry him. She consented. He deceived her, and she lived with him for several months, all the while insisting that he should marry her. He always promised that he would, until on one luckless day, he sneered at her and said that he would never marry her. He used the expression, "Only pigs marry."

This enraged her and she killed him.

Thousands of names attached to petitions for pardon have been sent to the Governor since her conviction.

Judge O'Brien's opinion makes 6,000 words. After reviewing the history of the case, Judge O'Brien says:

"The defendant was not guilty of murder in the first degree, unless the act was premeditated. If at the moment, in consequence of what the deceased said to her and the final culmination of the alleged wrong of which she conceived herself to have been the victim, she became incapable of reasoning or deliberating, the act, we think, would not constitute murder in the first degree. One of the determinations of the jury was as to whether her mind was in that condition. The defendant was entitled to the benefit of all testimony that had any legitimate bearing on that question, and to have the jury correctly instructed by the Court with respect to the principles of law that governed the inquiry."

"We are convinced from careful examination of the record that there was a wide departure from these principles in the conduct of the trial."

"The learned Court instructed the jury that the method of determining the question, and the only method, was by considering her act at the time it was committed. These instructions excluded from the consideration of the jury all the facts and circumstances of which the homicide was but the culmination. We think that the charge in this respect was erroneous."

Judge O'Brien quotes from the charge of Recorder Goff, when he referred to Marie Barberi in the following language:

"She lived with him at the time in meretricious intercourse. It was a mode of life condemned by sound public morals," etc., and says: "We think that this part of the charge was clearly erroneous. It was the province of the jury to determine the real moral condition of the woman and whether the words that the deceased uttered denoted a lingering hope and suddenly revealed to her mind her true position."

"The suggestion of the Recorder that according to natural laws woman is better

gifted to resist immediate implication than man, was departing from the real question in the case, and moreover was incorrect in point of fact, according to common experience."

"It is easy to be seen," says Judge O'Brien, "that all this tended to prejudice the jury against the defendant."

Judge O'Brien ends by applying the following opinion of the United States Supreme Court to Recorder Goff's attitude at the trial: "When the charge of the trial Judge takes the form of animated argument the liability is great that the propositions of law may become interrupted by digression and so intermingled with inferences springing from forensic art that the jury are left without proper instructions; their appropriate province of dealing with the facts is invaded, and errors intervene, which the pursuit of a different course would have evaded."

**HAS HIS UPTOWN SITE.**

Delmonico Will Sign for the Northeast Corner of Forty-fourth Street and Fifth Avenue.

Charles C. Delmonico purposes to move his uptown restaurant to the northeast corner of Forty-fourth street and Fifth avenue.

The negotiations between Mr. Delmonico and Theodore A. Havemeyer, owner of the proposed site, have been a subject of rumors for several weeks. The site is occupied by the Sherwood House. Mr. Delmonico has not yet affixed his signature to the document closing the deal, but all details have been arranged. Mr. Havemeyer has signed the papers, and it is expected that Mr. Delmonico will sign to-day. Architect James Brown Lord is drawing the plans for a new and magnificent structure that will cost more than \$1,000,000. The new site comprises 65 feet on Fifth avenue and 140 feet on Forty-fourth street. Mr. Delmonico has agreed to lease the building for a term of fifty years, with a privilege of renewal. The exact amount of the rental is not known, but it is understood that the restaurant shall pay the taxes and interest on the market value of the ground, and also on the cost of construction, which will be equivalent to about \$50,000 per annum.

Mr. Lord said yesterday that the plans as agreed upon call for a building facing on Forty-fourth street five stories high, with towers at each end extending two stories higher than the centre. Leading from the main entrance will be a marble staircase. On the Fifth avenue side of the ground floor will be the ladies' restaurant, while the cafe will be located on the other side. In the rear of the stairway will be a magnificent hall of palms, two stories high, with a dome of glass. The large ballroom, with the accompanying banquet halls, will be on the floor above. This will do away with the necessity of closing the main restaurant on the occasion of a ball, as is done at the present time. The floor above this will be devoted to smaller halls for the accommodation of dancing and supper parties.

In the towers will be bachelor apartments. The plans provide for a roof garden promenade. The main ballroom can be transformed into a bistro theatre for private theatricals and musical entertainments.

The exterior will be after the Italian renaissance style. Mr. Havemeyer bought the property six years ago from the estate of the late John H. Sherwood.

It has not been decided whether the present Delmonico location will be entirely abandoned or not. Mr. Delmonico is considering the advisability of transforming the upper part of the building into offices and retaining the ground floor as a business men's resort.

**To Give a Dinner to Mr. Daly.**

At the Lawyers' Club yesterday Walter S. Logan, chairman of the Shakespeare Society's committee on the Daly dinner, which will take place at Delmonico's this evening, gave a preliminary luncheon to Mr. Augustus Daly, General Horace Porter, Judge Daly, Appleton Morgan, Harrison Gray Fiske and Andrew J. C. Foy.

The Daly dinner to-night the speakers will be General Miles, General Porter, William Winter, Wallace Bruce and Senator C. K. Davis, of Minnesota.

**The American Medical Congress** will convene at Atlanta, Ga., May 25 to 28th. This convention will be largely attended from the Eastern and New England States. The Southern Railway, "Piedmont Air Line," is the direct line from the East to Atlanta, making the trip from New York in less than 24 hours. Solid Pullman vestibule train of Dining and Sleeping Cars New York to Atlanta. The low rate of one and one-third fare for the round trip has been made for the occasion. For further information call on or address the Eastern Office of the Southern Railway, 214 Broadway.

## GREEN GOODS GAME RUN IN PORT JERVIS.

Post-Office Officials Find a "Turning Joint" and a "Writer."

"Come-Ons" Lured from Remote Country Towns by Offers of "Fancy Paper."

A DEAD LETTER OFFICE CLEW.

Three Men Have Been Shadowed Since February by Anthony Comstock and Inspector Jacobs, Who Are Sure of Their Game.

Port Jervis, N. Y., April 21.—Chief Post Office Inspector Ashe, Inspector Jacobs and Anthony Comstock, of the Society for the Suppression of Vice, who have been at work since February searching for green goods men, believe they have located at least three of the operators here.

A father and son are leaders of the gang, while another son, who lives in Port Jervis, assists them. The gang has been operating since last November, at least, in West Virginia, New Jersey and Southern Connecticut, but most of their work has been in Port Jervis and New York City.

The first real clew was obtained here in January by Postmaster George A. Elston. Shortly after New Year's Day two letters came to him from the Dead Letter Office. The original letters had been misdirected, and as they were distinctly postmarked Port Jervis, they had been returned here from Washington, when Postmaster Elston opened them. They contained circular letters, extolling the virtues of a certain brand of fancy paper, said to be as

good as the original, and to prove this claim, with each letter, was enclosed a new, genuine \$1 bill.

A blank form of order was also enclosed, as well as the usual green goods formula, telling the expected purchaser how he could arrange with the parties dealing in the money in order to make sales. The letter had been typewritten and copies had been made by a mimeograph. Both letters were signed in black ink, one signature being "William H. Callender," and the other "E. S. Norton," and the address of each was the Delaware House, Port Jervis. Mr. Elston communicated with Inspector Ashe.

Inspector Jacobs and Anthony Comstock kept a sharp watch on the Port Jervis office and were astonished to learn what an exceedingly large transient business was apparently done at the Delaware House, a house of good reputation, conducted by a reputable man—William Webb, who was formerly employed on the Erie Railway.

As many as thirty letters were delivered there for strangers some days, while the average was a dozen. These letters came from distant country towns, among them being Enterprise, Ala.; Willow Grove, Ind.; Calhoun, Holly Grove, Echo and Natchez, La.; Design and Rochette, Va.; Venfouna, W. Va.; Vanderbilt, Mich.; Galata, Ill.; Pate, Tenn.; Florence, Ala.; Pinson, Tenn., and Conway, N. H.

The letters, always in the same chirography, were addressed to such persons as B. T. Inman, E. J. Reynolds, P. W. Lammann, D. H. Jenkins, J. H. Dawson, S. M. Farwell, T. J. Elwood, M. T. Ormsky, T. E. Gaynor, E. G. Flagler and dozens of others, and while all were sent to the Delaware House, the register of that hotel, strangely enough, fails to reveal the handwriting of these visitors to Port Jervis.

The inspectors thought they noted something strange in the fact that a young man of about thirty years often called at the Post Office after the close of the free delivery, and was given the mail of the Delaware House.

They compared his handwriting with that upon the various envelopes, and found it similar. Inspector Jacobs is authority for the statement that the picture of the

## Have You Tried Shredded Whole Wheat Biscuit?

The most nutritious Food Product ever put on the market. All enterprising grocers keep them. See them made and try them (served free to all) at Great Proper Food Exhibit, corner Broadway and 13th Street.

**FLINT'S FINE FURNITURE**

BEST FOR EVERY HOUSE.

Some one says that the best furniture is too rich and expensive to put in the average country house.

Is it, though? Wait until you see our simple dining-room and parlor designs in Chippendale and Sheraton shapes; our light wood bedroom designs in modifications of old French and Colonial forms, and our low prices on them all before you decide.

"BUY OF THE MAKER"

**GEO. C. FLINT CO.**

43, 45 and 47 WEST 23<sup>RD</sup> ST. NEAR BROADWAY.

FACTORY: 154 AND 156 WEST 19<sup>TH</sup> STREET.

\$3,000 in Cash Prizes

for Women.

'The Mill of Silence.'

To Begin in the JOURNAL

April 27.

young man's elder brother adorns the Rogues' Gallery in New York. When the young man was ill the mail for the Delaware House dropped off. When he recovered the mail picked up again.

All this convinced the Post Office authorities that he might possibly know something about the circulars, and to-day definite instructions were asked of the authorities at Washington as to how to proceed in dealing with him.

The men who have worked on the case believe that there are a great many men implicated in the swindle. A New York Central Railroad detective at Buffalo named Connors received a circular from a man who said he lived at the Delaware House, and Connors carried the game along so far as to be told to meet the dealer in green paper. The dealer, however, did not appear at the appointed place. Post Office Inspector Ryan, of the Buffalo district, was there to impersonate Connors.

**Death of a Retired Merchant.**

David Aaron, of 57 East Sixty-sixth street, a retired merchant, and a director of the Plaza Bank, died at 11 o'clock yesterday morning, in his sixty-third year, from a complication of diseases. He was for a long time a member of the firm of William Meyer & Company, of 483 Broadway. He was well-known throughout the South, having been for a number of years in business in Wilmington, N. C. The funeral will take place at 10 o'clock to-morrow morning.

**Death of a Retired Merchant.**

David Aaron, of 57 East Sixty-sixth street, a retired merchant, and a director of the Plaza Bank, died at 11 o'clock yesterday morning, in his sixty-third year, from a complication of diseases. He was for a long time a member of the firm of William Meyer & Company, of 483 Broadway. He was well-known throughout the South, having been for a number of years in business in Wilmington, N. C. The funeral will take place at 10 o'clock to-morrow morning.

**Death of a Retired Merchant.**

David Aaron, of 57 East Sixty-sixth street, a retired merchant, and a director of the Plaza Bank, died at 11 o'clock yesterday morning, in his sixty-third year, from a complication of diseases. He was for a long time a member of the firm of William Meyer & Company, of 483 Broadway. He was well-known throughout the South, having been for a number of years in business in Wilmington, N. C. The funeral will take place at 10 o'clock to-morrow morning.

## SORRY HE FAILED TO KILL.

Magistrate Crane Vindicated Black for His Hardy Attack on Dr. Apfel.

Allen Black, of No. 126 Rivington street, appeared in the Essex Market Court yesterday to answer to the charge of assault preferred against him by Dr. Moses Apfel, of No. 67 First street.

Black went to the doctor's house Monday evening and a fight ensued. He claimed that the doctor had alienated the affections of his wife, who is only seventeen years old, and that she was in Apfel's house when he went there.

Apfel claimed that the assault was an unprovoked one, and that he had not seen Mrs. Black for two months.

While standing in the dock Black turned to Apfel and said:

"I am not through with you yet. I am sorry that I did not kill you."

D. W. Rochmoritz, a law clerk, testified that Mrs. Black had tried to get a divorce from her husband, but was unsuccessful, and that her relations with Dr. Apfel were a matter of gossip in the neighborhood.

In discharging Black Magistrate Crane said:

"I do not believe, Doctor, that you have been telling the truth about this woman. If you did so to my wife I would be liable to do the same thing that Black did, and I think you got off very easy. I warn you to leave this woman alone or you will get into serious trouble."

## It Is Now a Public Secret

THAT WE GIVE CREDIT TO EVERYBODY. WE MAKE NO EXCEPTIONS TO THIS RULE IF YOU WILL ONLY SATISFY US THAT YOU ARE A PROPER PARTY TO GIVE CREDIT TO.

You Can Make Your Own Terms.  
You Can Pay Down What You Like.  
You Can Buy as Much as You Like.

The name of J. & S. BAUMANN stands high with those who have tried us, both in our liberal terms given to them and to our fair treatment to those whose misfortunes have forced them to rely on our properly giving them a chance.

## WE CARRY EVERYTHING FOR HOUSEKEEPING

Furniture, Carpets, Bedding, Lamps, Baby Carriages, Oilcloths, Stoves, Pictures, Clocks, Portieres, Crockery, Refrigerators, Tinware and Lace Curtains.

OUR COMPLETELY FURNISHED 4-ROOM FLAT FOR \$100 AND \$150 IS STILL A FEATURE OF OUR ESTABLISHMENT, AND IF YOU WILL CALL OUR SALESMEN WILL SHOW YOU SALES. PARTIES ARE REQUESTED BY THE TRADE TO DESIRE TO FURNISH THEIR HOTELS TO CALL THEMSELVES OF OUR CREDIT SYSTEM IF THEY SO DESIRE.

We Allow the Railroad Fare Both Ways to Out-of-Town Purchasers.

WITHIN THE RADIUS OF 150 MILES FROM NEW YORK.

OUR NEW CATALOGUE, EMBRACING EVERYTHING FOR HOUSEKEEPING, AND QUOTING PRICES WHAT YOU CAN BUY ON CREDIT, IS NOW READY, AND UPON RECEIPT OF 5c. POSTAGE WE WILL MAIL YOU ONE.

## J. & S. BAUMANN'S,

8th Ave., Cor. 19th St.

OPEN SATURDAY EVENING UNTIL 10 O'CLOCK.

"Greater New York's Greatest Store."

3rd Ave. 59 & 60th Sts.

Another Thursday Morning Sale!

FROM 8 A. M. TILL NOON THURSDAY,

Your Choice of the following SUITS at

\$1.88

A sum small in itself, but capable of great execution during this sale.

ST. SHORTLY ALL-WOOL, TWEED SUITS, sizes 4 to 14

brown and gray mixtures and checks; Pants

with DOUBLE SEAT AND KNEES, sizes

6 to 16 years, value \$3.00 to \$4.00.

Thursday morning..... 1.88

We will also dispose of about 65 BLACK UN-

FINISHED WORSTED SUITS, a \$5.00 ar-

article; they must go with the rest

st..... 1.88

SEE THE GREAT WINDOW DISPLAY ON 59TH ST.

NOTE.—Our Thursday Clothing Sales are so well known that we give very few explanations.

The announcement is sufficient to draw crowds of customers from a radius of a hundred miles.

To those who have not attended these sales we add this caution:

Come as soon after 8 a. m. as possible, but by all means before 12 noon. Five minutes past 12—your time is too late.

BLOOMINGDALE BROS., 3d Ave., 59th and 60th Sts.

76th Street, 76th Street,

3d Ave. 3d Ave.

SPECIALS THIS WEEK:

5-PIECE PARLOR SUITS..... 17.00 up.

COMFORTABLE ROCKERS..... 1.50 up.

OAK OR MAHOGANY FINISH DESKS..... 3.50 up.

Everything for Housekeeping.

FURNITURE, CARPETS, BEDDING,

OILCLOTH, MATTING, STOVES, TIN WARE,

CROCKERY, PORTIERES, CLOCKS, CURTAINS,

REFRIGERATORS, BABY CARRIAGES, Etc.

LIBERAL CREDIT SYSTEM.

J. BAUMANN & BRO.,

1313-1315 3d Ave.,

3d Ave. ELEVATED 76TH ST. STATION.

Cable Cars pass the door. Open Saturday Evenings until 10 P. M.

For the Postage—A Sample of Famous

Sozodont